THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ADOLF SCHOEPE

Appeal No. 1997-2508
Application 08/329,463

ON BRIEF

Before COHEN, ABRAMS, and GONZALES, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This appeal involves claims 4 through 6. The notice of appeal dated July 17, 1996 specifies claims 4 through 6 and 9. However, a later notice of appeal dated September 20, 1996 only sets forth claims 4 through 6. Consistent with the above, and the statement in the appeal brief (page 1) that

claim 9 is “Not Appealed”, we consider the appeal as to claim 9 as dismissed.

Claim 11 stands allowed. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to an apparatus for magnetically treating water passing through an elongated pipe to enhance properties of the water. An understanding of the invention can be derived from a reading of exemplary claim 6, a copy of which appears in the "APPENDIX TO BRIEF" (Paper No. 10).

As evidence of obviousness, the examiner has applied the documents listed below:

Menold	4,265,754	May 5, 1981
Eggerichs	4,879,045	Nov. 7, 1989

The following rejection is before us for review. [1]

[1] A final rejection under 35 U.S.C. § 112, second paragraph, was overcome as indicated in the advisory action of July 8, 1996 (Paper No. 8).

Claims 4 through 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Menold in view of Eggerichs.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the answer (Paper No. 11), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 10 and 12).

OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellant's specification[2] and claims, the applied

[2] We are informed by appellant's "BACKGROUND OF THE INVENTION" (specification, pages 2 and 3), and the "INFORMATION DISCLOSURE STATEMENT BY APPLICANT"(IDS)in the application, as to the state of the art when the present invention was made. Of particular relevance are the following documents cited in the IDS and of record in the application:

Vermeiren (U.S. Patent No. 2,652,925) teaching a magnetic treatment device for liquids with the alternatives of an

(continued...)

prior art,[3] and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

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[2](...continued)
axially spaced plurality of solenoids (Fig. 1) or an axially spaced plurality of magnets (Fig. 3) along the exterior of a pipe;

Kronenberg et al. (International Publication Number WO 85/03649) disclosing in Figure 8A-G magnetic elements separated and placed around a cylindrical tube; and

Weisenbarger et al. (U.S. Patent No. 4,711,271) and Burns (U.S. Patent No. 5,320,751) each providing a distinct frame for circumferentially (not axially aligned) arrayed magnets.

Kulish (U.S. Patent No. 4,605,498), listed as a reference cited in each of the aforementioned Weisenbarger and Burns patents, is likewise pertinent in disclosing a distinct frame for circumferentially arranged magnets. A copy of the Kulish document accompanies this opinion.

These referenced documents would appear to us to be worthy of further consideration in the event of any subsequent prosecution before the examiner.

[3] In our evaluation of the applied patents, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

We affirm the examiner's rejection of claims 4 through 6.

Claims on appeal are interpreted as broadly as their terms allow, without reading limitations from the specification into the claims. See In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) and Sjolund v. Musland, 847 F.2d 1573, 1581-1582, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988). Thus, we comprehend the subject matter of claims 4 and 6 as clearly and broadly encompassing at least two magnets only circumferentially spaced and not axially spaced, and as permitting other magnets within the frame to be present and spaced therefrom.

Applying the test for obviousness,[4] while taking into account our above understanding of the content of appellant's claimed subject matter, we reach the conclusion that it would

[4] The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

have been obvious to one having ordinary skill in the art, from a combined assessment of the applied teachings, to provide three of the two piece interfitting housings (frames) with diametrically opposed permanent magnet structures 60, 62 disclosed by Menold (Fig. 5), clamped about and along the pipe 72. In our opinion, the suggestion for this modification would have been derived by one having ordinary skill from the overall teaching of Eggerichs, i.e., it would have been appreciated by one versed in the art that the alternative application of additional frames as taught by Eggerichs (Fig. 3) would enhance the application and effect of the magnetic field. Our view is consistent with the teaching by Eggerichs of the known alternatives of one (Fig. 1) or more (Fig. 3) magnetic sources. For the above reasons, claims 4 and 6 are determined to be unpatentable under 35 U.S.C. § 103. The conclusion of obviousness is reached relative to the content of claim 5 in light of the suggestion therefor derived from the aforementioned two piece housing (frame) configuration of Menold.

The argument advanced by appellant in both the main and

reply briefs does not persuade us as to the patentability of the claims on appeal. For the reasons articulated above, and notwithstanding appellant's view to the contrary (main brief, pages 3 and 4) to the effect that the claimed subject matter requires only circumferentially-spaced magnets,[5] we have concluded that the apparatus broadly recited in each of claims 4 through 6 would have been fairly suggested by the evidence of obviousness before us.

In summary, this panel of the board has affirmed the rejection of claims 4 through 6 under 35 U.S.C. § 103.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

[5] In other words, the content of the claims on appeal clearly does not require a frame to be devoid of axially-spaced magnets spaced in a direction parallel to the axis of a pipe, as required for an assembly (frame and pair of magnets) in the particular combination set forth in allowed claim 11.

AFFIRMED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
NEAL E. ABRAMS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOHN F. GONZALES Administrative Patent Judge	)	

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